

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: CITY OF WILLEY Carroll County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2007-AQ- 14 NO. 2007-SW- 08
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TO: City of Willey
Randy Huegerich, Mayor
210 Olympic Avenue
Willey, Iowa 51401

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the City of Willey for the purpose of resolving the air quality and solid waste disposal violations which occurred in the City of Willey. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Thad Nanfite, Field Office #4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, IA 50022
Phone: 712/243-1934

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted

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pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. On August 24, 2006 DNR Field Office 4 (FO4) received an anonymous complaint alleging that the City of Willey had demolished a house and a bar. The complainant alleged that the buildings were taken down and removed and the county landfill did not have a record of the building debris being disposed of at the landfill. The complainant stated the buildings had not been inspected for asbestos and demolition notifications had not been submitted.
2. On September 15, 2006, Thad Nanfito, FO4 environmental specialist, investigated the complaint. Mr. Nanfito observed a vacant area at the intersection of 260th Street and Olympic Avenue in Willey, Iowa. Mr. Nanfito observed evidence of open burning and open dumping on adjacent property including burned debris, metal, construction and demolition waste, tables, chairs, bar stools and miscellaneous other items.
3. On September 21, 2006, Mr. Nanfito talked to Randy Huegerich, Mayor of the City of Willey. Mayor Huegerich confirmed that a house located at 100 Olympic Avenue and a bar located at 401 260th Street had been demolished and burned. Mayor Huegerich stated that the City of Willey was responsible for the condemnation, demolition, transport and subsequent burning of the structures. He stated the structures were demolished and then moved and burned at the property owned by the City of Willey located at 149 Olympic Avenue. Mayor Huegerich further stated that the demolition and subsequent burning were conducted by "volunteers" for the City and that there were no prohibitions to open burning within the City of Willey's corporate limits. Mayor Huegerich stated the structures were condemned and demolished because they were unsafe. DNR FO4 confirmed that the structures had not been inspected for asbestos prior to demolition and burning and that the proper demolition notifications had not been submitted to the DNR. The Carroll County Assessor recorded the sale of 100 Olympic Avenue, 149 Olympic Avenue, and 401 260th Street to the City of Willey on August 3, 2006.
4. On September 27, 2006, FO4 staff informed Mayor Huegerich that the City of Willey must dispose of previously burned or demolished material as asbestos containing material. Mayor Huegerich was also notified that the City of Willey must utilize an on-site supervisor or foreman trained in National Emission Standards for Hazardous Air Pollutants (NESHAPS) regulations for asbestos during the disposal.
5. On October 3, 2006, a Notice of Violation (NOV) letter was sent to the City of Willey for open burning of combustible materials and improper disposal of solid waste materials. The NOV informed the City of Willey that it had violated NESHAP regulations, and that the matter was being referred to DNR's Legal Services Bureau for enforcement action. The City of Willey was also required to properly dispose of the material and submit records of proper

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disposal by November 15, 2006. The letter included copies of the DNR's open burning, solid waste, and asbestos NESHAP regulations.

6. Following the receipt of the Notice of Violation letter, the City of Willey hired an asbestos contractor and had the remaining debris taken to the landfill as asbestos containing material. Other solid waste located at the burn site was also removed and properly disposed of.

7. The City of Willey states that it has no fire department and that its population is approximately 100 people with an annual budget of \$10,000.00.

8. The City of Willey states there is no evidence that asbestos was or was not released during the open burning of the buildings.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The City of Willey demolished and burned a house and a commercial building. The above facts demonstrate noncompliance with this provision.

3. 567 IAC 23.2(3)"j" provides an exemption for the controlled burning of a demolished building by a city provided a number of requirements are met, including but not limited to conducting a thorough asbestos inspection prior to the demolition and submitting a notification to the DNR at least 10 days prior to the demolition and at least 30 days prior to the controlled burn. The above facts do not constitute exempt burnings because the City of Willey did not conduct a thorough asbestos inspection prior to demolishing the two buildings and did not submit notifications to the DNR prior to the demolition or the burning.

4. Iowa Code section 455B.133 provides for the Environmental Protection Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

5. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence that an

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asbestos inspection was ever completed prior to the demolition of the buildings. The above facts indicate a violation of this provision.

6. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. DNR has no record of receiving the required notification for the demolition of the buildings. The above facts indicate a violation of this provision.

7. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-121.

8. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The demolition debris from the buildings was burned and remained at the burn site rather than disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and the City of Willey agrees to do the following:

1. Conduct any and all training fires and demolition burns in accordance with 40 CFR 61.145, 40 CFR 61.150, 567 IAC 23.2(1) and 567 IAC 23.2(3)";
2. Dispose of all solid waste materials in accordance with 567 IAC 100.4; and
3. Pay a penalty of \$3,000.00 in accordance with the following payment plan:
 - \$1,000.00 due June 1, 2007;
 - \$1,000.00 due June 1, 2008; and
 - \$1,000.00 due June 1, 2009.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$3,000.00 is assessed effective 30 days from the date this administrative consent order is signed by the Director and shall be paid in accordance with the Payment Plan established in Section V, Paragraph 3. The administrative penalty is determined as follows:

Economic Benefit - Failure to follow the proper asbestos NESHAP regulations by the improper open burning and disposal of the buildings may have allowed the City of Willey to save time and money. However, the City of Willey is now required to have all of the debris removed as asbestos containing material and any economic benefit the City of Willey has

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received is minimal, and limited to the costs avoided by the City of Willey by failing to inspect and to properly notify DNR prior to demolition. Based on the above considerations, \$250.00 is assessed for this factor

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the demolition and burning of the structures. The violation threatens the integrity of the regulatory program because compliance with the open burning, asbestos, and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Based on the above considerations, \$2,000.00 is assessed for this factor.

Culpability – Local governments have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. Local governments are expected to submit proper notifications, conduct asbestos inspections, and properly conduct a demolition in accordance with DNR's regulations. Based on the above considerations, \$750.00 is assessed for this factor.

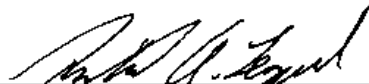
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of the City of Willey. For that reason, the City of Willey waives its rights to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.

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RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 15 day of
June, 2007.



For the City of Willey

Dated this 8 day of
June, 2007.

Barb Stock (Con 10-6 Carroll County); Kelli Book; Thad Nanfity; EPA; VI.C, VII.C.1, and
VII.C.4